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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/619,391	07/19/2000	Roman Schertler	622/40901C2	2663

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EXAMINER

JIMENEZ, MARC QUEMUEL

ART UNIT

PAPER NUMBER

3726

DATE MAILED: 03/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/619,391	<b>Applicant(s)</b> SCHERTLER, ROMAN	
	<b>Examiner</b> Marc Jimenez	<b>Art Unit</b> 3726	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 February 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 35-43,45-54,72 and 73 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 35-43,45-54,72 and 73 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                        |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____   |

## DETAILED ACTION

### *Reissue Applications*

1. The reissue oath/declaration filed with this application is defective because it fails to identify at least one error which is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414. Applicant is required to state at least one example of broadening with reference to the word or phrase being omitted from the claims.

Note that MPEP 1444 states under the heading “HANDLING OF THE REISSUE OATH/DECLARATION DURING THE REISSUE PROCEEDING” that:

“A different situation may arise where the initial reissue oath/declaration does properly identify one or more errors under 35 U.S.C. 251 as being the basis for reissue, however, because of changes or amendments made during prosecution, none of the identified errors are relied upon any more. A supplemental oath/declaration will be needed to identify at least one error *now* being relied upon as the basis for reissue, even though the prior oath/declaration was earlier found proper by the examiner.”

2. Claims 35-43, 45-54, 72, and 73 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

3. Note that surrender of the original patent is no longer required.

### *Response to Arguments*

4. Applicant's amendments to claims 36 and 53, and applicant's arguments, see page 8, lines 8-9, filed 10/6/03, with respect to the rejection of claims 36 and 53 under 35 U.S.C. 112 2<sup>nd</sup>

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paragraph have been fully considered and are persuasive. The rejection of claims 36 and 53 under 35 U.S.C. 112 2<sup>nd</sup> paragraph has been withdrawn.

5. Applicant's arguments, see page 8, lines 8-13, filed 10/6/03, with respect to the rejection of claim 72 under 35 U.S.C. 112 2<sup>nd</sup> paragraph have been fully considered and are persuasive. The rejection of claim 72 under 35 U.S.C. 112 2<sup>nd</sup> paragraph has been withdrawn.

6. Applicant's amendments to claim 72 and applicant's arguments, see page 8, lines 14-19, filed 10/6/03, with respect to the rejection of claim 72 under 35 U.S.C. 103(a) as being unpatentable over Helms in view of Lorenz have been fully considered and are persuasive. The rejection of claim 72 under 35 U.S.C. 103(a) as being unpatentable over Helms in view of Lorenz has been withdrawn.

7. Applicant's arguments, see page 8, lines 3-4, filed 10/6/03, with respect to the rejection of claims 52-54 under 35 U.S.C. 251 as being an improper recapture have been fully considered and are persuasive. The rejection of claims 52-54 under 35 U.S.C. 251 as being an improper recapture has been withdrawn. During the telephone interview of 9/25/03 conducted with related application 08/962,776, applicant was notified that the recapture rejection will be withdrawn. See interview summary dated 9/25/03 attached hereto. The recapture rejection was applied in both the instant application and the 08/962,776 application dealing with the same "projecting from" limitation.

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***Contact Information***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Jimenez whose telephone number (571) 272-4530. The examiner can normally be reached on Monday-Friday between 5:30 a.m.-2:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on (571) 273-4530. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Marc Jimenez  
Primary Examiner  
Art Unit 3726

**MJ**

March 1, 2005